

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
MAR 01 2010
E. Schlesinger
CLERK

ROGER MOHLING and ROBERT PARRY, * CIV 07-1019
*
Plaintiffs, * ORDER AND OPINION
* ON MOTIONS
*
-vs.- *
*
FARM BUREAU MUTUAL INSURANCE *
COMPANY d/b/a/ FARM BUREAU *
FINANCIAL SERVICES, *
*
Defendant. *

Plaintiffs filed an amended complaint contending that defendant terminated their employment on November 30, 2006, in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 et seq. Defendant filed a previous motion for summary judgment contending that plaintiffs were not employees within the meaning of the ADEA. That motion was denied. Defendant filed a second motion, Doc. 53, for summary judgment contending that plaintiffs cannot show that their relationship with Farm Bureau would not have been terminated “but for” age discrimination.

I do not want to encourage counsel in any given case to be filing more than one motion for summary judgment. There is no reason why all claims as to a summary judgment matter should not be submitted at one time and defendant has failed to do this. I will nevertheless deal with the second motion.

Plaintiffs filed a motion, Doc. 58, to compel responses to interrogatories and requests for production of documents. That discovery dispute was the subject of a previous informal conference between counsel and the Court. Defendant promised to respond to those requests so that plaintiffs could timely file a response to the motion for summary judgment. Plaintiffs have also filed a motion, Doc. 61, to extend the deadline to respond to the motion for summary judgment.

I sent a memorandum to counsel requiring defendant to respond to the motion to compel. Defendant's response does not address the issues raised in the informal conferences, the motion to compel, and my memorandums. Specifically, defendant has not set forth any authority for failing to serve signed responses to plaintiffs' discovery requests nor any explanation for failing to provide discovery promised during the informal conference with the Court.

The defendant has failed to act in good faith and has failed to follow the requirements of the Rules of Civil Procedure. The defendant has engaged in what are frankly dilatory practices. The defendant has interfered with the orderly process of this case. Even at this late date, the defendant has failed to sign and date answers to the interrogatories and to the requests of plaintiffs for discovery. This is not proper conduct.

Sanctions should be imposed against the defendant. The latest motion for a summary judgment filed by the defendant should be stricken without requiring any response to it by plaintiffs. The Court finds that the defendant has failed to act in good faith in supplementing its discovery responses pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure. The authority for the sanction is found at Rule 37(b)(2)(A)(i)-(vii). Rule 37(b)(2)(A)(iii) does permit the Court to "strike--pleadings in whole or in part."

The plaintiff should be required to file an affidavit in support of any request for attorneys fees and costs caused by the failure of the defendant to comply with discovery requirements and previous directives of this Court. This filing should be made as directed below.

The motion of the plaintiffs to compel complete responses and answers to the pending discovery requests should be granted.

Good cause appearing,

IT IS ORDERED:

1. Defendant's motion, Doc. 53, for summary judgment is denied.
2. Plaintiffs' motion, Doc. 58, to compel is granted.
3. Defendants shall provide complete, signed, discovery responses on or before

March 15, 2010.

4. Plaintiffs's request for sanctions is granted. Plaintiffs shall file an affidavit in support of attorneys fees and costs caused by defendant's failure to comply with discovery on or before April 1, 2010.

5. Plaintiffs' motion, Doc. 61, to extend the time to respond to the motion for summary judgment is denied as moot.

Dated this 1st day of March, 2010.

BY THE COURT:



CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK



BY:  DEPUTY
(SEAL)